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SUBJECT: DEMARCHE REQUEST: USG CONCERNS ON ISO SOCIAL
RESPONSIBILITY DRAFT STANDARD

SUMMARY

¶1. Department requests Post approach host government officials to underscore serious USG concerns with the International Organization for Standardization (ISO) draft standard on social responsibility (ISO 26000). As USG concerns are extremely broad, Post is requested to engage not only host government standards officials, but also trade ministry officials dealing with the World Trade Organization (WTO) and Technical Barriers to Trade (TBT), as well as foreign ministry officials responsible for human rights and international law issues. Post may draw upon the background below as well as the non-paper (para 8), which may be left with host government officials. End Summary.

OBJECTIVES

¶2. Department instructs Embassy to pursue the following objectives:

-- Inform host government officials of USG concerns regarding ISO 26000's potential ramifications in the areas of trade (WTO TBT Agreement) and international law (e.g. human rights);

-- If they share our concerns, encourage host government officials to meet with their national standards bodies that are ISO members and underscore these concerns;

-- Suggest host government take stock of its representation in their ISO member body participation in the ISO 26000 Social Responsibility Activity. Suggest it elevate or increase attendance as appropriate to ensure relevant expert government perspectives are integrated into the process of developing this standard, which is different from the process typically used to develop ISO standards. Ideally, host government would be prepared to participate through its national body at the next Working Group meeting on September 1-6, 2008, in Santiago, Chile;

-- Seek host government agreement to press for accountability and consideration of shared government concerns within the working group;

-- Provide Post's assessment of the coordination within host

government agencies on the ISO 26000 process, and possible effective avenues for increased engagement to advance the USG message.

REPORTING DEADLINE

13. Post should report results of these efforts by cable slugged for EEB/TPP/MTA (AScheibe), USTR (JDoherty), EPA (MMckiel), and DOC (HHijikata and JStradtman) before May 28.

BACKGROUND

14. The development of the ISO 26000 standard on social responsibility dates to 2005, with the formation of a working group comprised of six "stakeholder" groups (including industry, government, NGOs, etc.). The draft ISO standard is now at a crucial stage of consideration (known as Working Draft 4, or WD 4), where consensus drafting of the standard by stakeholder experts will soon move to consensus approval by ISO member bodies. It is essential that significant concerns with the standard's content are addressed in the very near future, before the document advances to later stages. The next iteration of the draft standard (WD 4.2) is due out June 2. The attached non-paper (para 8) contains additional background on the ISO process and ISO 26000 in particular. Both the non-paper and the Working Draft 4 document are also available on the State Intranet at <http://eb.state.gov/shortcut.cfm/DQS> in the "ISO 26000 Demarche Documents" box.

15. The U.S. Government has serious concerns with the substantive content of the WD 4 document. In our view, these concerns are compounded by procedural issues that reduce the drafter's accountability to stakeholder concerns and make it difficult to fix problems in the text. In April, the USG submitted a letter to the Working Group facilitators as well as ISO leadership detailing many of our procedural and substantive concerns. (The letter is also available on the State Intranet at the link above) The USG is not convinced consensus is possible on the highly-charged policy issues contained in the current draft. However, we believe the process should facilitate the work that must be done on the heart of substantive issues to ensure any outcome is truly a consensus product.

16. The substantive concerns of the USG regarding the content of the draft ISO 26000 standard include the following:

-- The current ISO 26000 draft is problematic because it is replete with innumerable misstatements and mischaracterizations of international law. The draft delves into complex and controversial subject matter over which the drafters have inadequate expertise and no authority, and often presents novel or controversial interpretations of international law as settled matters. Some of the draft's statements on international human rights law, international environmental law, and other matters are mere statements of opinion or belief that should not be characterized as representing an "international standard."

-- The latest draft's legal characterizations are particularly problematic with respect to its human rights content. The draft inappropriately transplants state responsibilities on human rights to non-state actors, which are not proper subjects of international human rights law. International human rights law has been drafted such that the legal obligations generally apply to government actors (e.g., to not take measures that impair freedom of expression). Replacing "government" with "organization", as the draft frequently does, may be entirely inappropriate, or even nonsensical. The USG believes the current draft's approach is fundamentally flawed, and would likely be invoked against USG interests in domestic courts and international fora.

-- Publication of the ISO 26000 standard could be especially problematic from an international trade perspective because

international standards play an important role in the WTO TBT Agreement. International standards are often the basis for technical regulations (mandatory standards) promulgated by countries because technical regulations that meet one of the legitimate objectives listed in the TBT Agreement (see non paper) and that are in accordance with relevant international standards are presumed not to create unnecessary obstacles to trade under the TBT Agreement. Although ISO 26000 is clearly not intended for adoption into law by governments, should a government either reference it or mandate compliance with it, it could be binding, irrespective of the original intent expressed by the drafters. ISO 26000 could therefore be misused with a view to undermining the purpose, effect, and operation of the TBT Agreement, with the result of creating, rather than preventing, unnecessary obstacles to international trade.

-- The current draft sets out to establish so-called "Principles of Social Responsibility" and then includes several principles on which there is no international consensus. In fact, several such "principles" are at odds with both existing international treaties and standards and could have a significant commercial impact. For example, the so-called "precautionary approach" and "polluter pays" concepts do not rise to the status of principles of international law, and are still subject to discussions or decisions in other fora over their proper application. The USG believes the use of the term "principle" is an effort to elevate these and other concepts to a higher status in the context of international governance and circumvent the efforts in other fora.

17. Given its current content, the USG believes that publication of the ISO 26000 document as a "standard" would be problematic. Further, while the draft states that the standard is not intended or appropriate for certification purposes, it is written throughout in an overly prescriptive manner that will inevitably invite such inappropriate conformity assessments by certification or other bodies (e.g., stating that an organization is ISO 26000 "compliant").

18. Begin Non-Paper on ISO 26000

The International Organization for Standardization (ISO), one of several international standardizing bodies, is a non-governmental organization established in 1947. On its website, <http://www.iso.org>, ISO describes itself as: "... a network of the national standards institutes of 157 countries, one member per country, with a Central Secretariat in Geneva, Switzerland, that coordinates the system." The national standards institutes of many countries are government bodies. The U.S. member body is the American National Standards Institute (ANSI), which is a private sector federation whose members include a number of federal agencies as well as industry, consumers, non-government organizations and academics.

ISO's work program "ranges from standards for traditional activities, such as agriculture and construction, through mechanical engineering, manufacturing and distribution, to transport, medical devices, information and communication technologies, and to standards for good management practice and for services."

ISO standards are developed in consensus-based committees and are voluntary in and of themselves since ISO has no authority to require or enforce the standards it publishes. Some ISO standards support verification by third party certification bodies. The primary focus of ISO standards activities over the years has been to harmonize technical and other product-related elements to facilitate trade. For example, harmonized international standards, when implemented by businesses around the world, help ensure global availability of product replacement parts. However, ISO standards are also adopted by governments into regulations or used in contracts or other legitimate and enforceable vehicles. Increasingly in the past few years ISO members have voted to

develop standards that move from traditional technical areas into those that have greater public policy implications.

Under the Technical Barriers to Trade agreement (TBT Agreement) of the World Trade Organization (WTO), technical regulations) that are prepared, adopted or applied for one of the legitimate objectives explicitly mentioned in the TBT Agreement and that are in accordance with relevant international standards are given a rebuttable presumption of conformity as not creating unnecessary obstacles to trade. Legitimate objectives under the TBT Agreement include: national security requirements; the prevention of deceptive practices; the protection of human health or safety, animal or plant life or health, or the environment.

Adoption and use of ISO and other international standards to achieve regulatory objectives or to access specific markets can and does have an impact on commercial trade flows. In some cases, where ISO standards support a particular country's regulations, adoption of the standards can disadvantage third countries exports to that market. Adoption can displace exports from third country members or result in additional costs to enter the market.

The subject of this communication is an ISO standard currently under development on the subject of Social Responsibility. This initiative was originally proposed to ISO as a standard on corporate social responsibility by its policy advisory committee on consumer issues (known as COPOLCO) in 2002. Since this proposal emanated only from the consumer interest perspective, ISO explored the possibilities for this potential standard in a multi-stakeholder Strategic Advisory Group from 2003 through 2005. The results of this exploration across stakeholder categories was a recommendation that ISO embark on developing such a standard, under certain conditions such as ensuring proper expert participation and balanced stakeholder input, subject to broader endorsement at an international conference and via voting by all ISO member countries.

This broader endorsement was achieved in 2005 and a special working group (referred to as the WGSR) was formed to develop an ISO standard on social responsibility. In order to support proper and balanced stakeholder expert participation, ISO decided to require participating member bodies to name up to six experts to participate, one from each of six identified and agreed stakeholder categories (industry, government, labor, consumers, NGOs, and other interests). Under this arrangement, the WGSR has been advancing its work since early 2006. The draft ISO standard is now at a crucial stage of consideration, where consensus drafting of the standard by stakeholder experts will soon move to stages of consensus approval of the draft standard by ISO member bodies. It is important that significant concerns with the standard's content are addressed in the very near future, before the document advances to later stages.

In considering the implications of the ISO standard for Social Responsibility currently under development, trade and other international governmental experts should be aware that the resultant document may reflect regulatory principles and policies that are inconsistent with their own regulatory regime. Further, and more potentially troublesome, the SR document ventures, without benefit of legal review, into areas that are addressed by intergovernmental agreements and can have the effect of re-interpreting existing agreements, all within the context of an international standard. Moreover, U.S. industry has serious concerns about this standard, which if adopted and incorporated into WTO Member country laws as a mandatory technical regulation could constitute a significant trade barrier.

We greatly appreciate your careful consideration of our concerns. If you do agree with our concerns on this draft ISO standard, please let us know, but please also work with the ISO member organization (national standards body) in your country so that it is aware and its positions and comments

may be informed and influenced by your input. Contact information on the ISO member organization (national standards body) for your country is available online at the following location:

http://www.iso.org/iso/about/iso_members.htm

End Non-Paper

POINT OF CONTACT

19. Please contact Aaron Scheibe in the Bureau of Economic, Energy, and Business Affairs at (202) 647-8202 or via e-mail, or USTR's Julia Doherty (Julia.Doherty@USTR.EOP.GOV) for any further background information or argumentation to meet our objectives.

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